

ST 05-0137-GIL 12/29/2005 CONSTRUCTION CONTRACTORS

A contract to incorporate tangible personal property into real property is considered a construction contract. A contractor incurs Use Tax on the cost price of the tangible personal property that is installed. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

December 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2005, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have a question regarding Illinois State Sales Tax. Can an Illinois company charge a customer an additional charge on the sales tax amount. Is this amount sent to the State? Per the attached sheets, ABC is charging me a 10% overhead and a 10% profit on the sales tax amount. Is this legal for them to do this under Illinois Sales Tax Law? If not, can something be done to prevent them from charging other customers for this?

**DEPARTMENT'S RESPONSE:**

We cannot provide you with a specific answer due to the limited information contained in your letter and the attachments. However, from the attachments enclosed with your letter, it appears as though you may have contracted with the company in regards to a construction contract. The attachments reference charges for the removal and replacement of smoke detectors, copper wiring, a garage door opener, an exterior light fixture, and a ceiling fan.

A contract to incorporate tangible personal property into real property is considered a construction contract. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of

the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self assess their Use Tax liability and pay it directly to the Department.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton  
Senior Counsel, Sales & Excise Taxes

TDC:msk